

Exhibit H

**DEFENDANTS' PROPOSED INSTRUCTION
REGARDING DEFINITION OF ALFORD PLEA**

Throughout this trial you will hear the attorneys and witnesses refer to an *Alford* plea. An *Alford* plea is a type of guilty plea where a criminal defendant does not admit guilt but concedes that a jury would most likely convict him based on the strength of the prosecution's evidence. Because the criminal defendant does not admit guilt, the court must establish an entirely independent factual basis for the guilty plea, which substitutes for an admission of guilt, before the criminal defendant may be determined by the court to be guilty.

Authority: *State v. Scott*, 150 Wash. App. 281, 294-95, 207 P.3d 495 (2009); *In re Spencer*, 152 Wash. App. 698, 700 n.1, 218 P.3d 924 (2009); *In re PRP of Mayer*, 128 Wash. App. 694, 701, 117 P.3d 353 (2005); *State v. D.T.M.*, 78 Wash. App. 216, 220, 896 P.2d 108 (1995).

Plaintiff's objection: the use of the term "guilty plea" in the second sentence poses the risk of confusion for the jury, because an Alford plea is not an admission of guilt. Plaintiff further objects to the portion of the last sentence, "before the criminal defendant may be determined by the court to be guilty", because it misstates the law. The court does not determine that a defendant is guilty; rather, it accepts the plea upon a showing of a sufficient factual basis. *State v. Zhao*, 157 Wash. 2d 188, 197-98 (2006) (quoting CrR 4.2(d)).

Defendants' response: There would be no confusion by referring to an Alford plea as a guilty plea because it is in fact a guilty plea as stated in the above-cited cases. It would be misleading to suggest that it is anything other than a type of guilty plea. Defendants have fairly included the language that the criminal defendant does not admit guilt, and a fair description of the resulting court procedure that must follow before the guilty plea may be accepted by the criminal court.